Remarks

Claims 1-17 were pending in the application. All the pending claims were either objected to or rejected for the various reasons described in the Office Action and summarized below.

The Examiner objected to claim 11 for the informalities noted in the Office Action. This claim has been amended and it is submitted that the objection is not applicable to the amended claim.

The Examiner rejected under 35 USC 102(b) claims 1, 4, 10, 12, 14, 15 and 17 as being anticipated by *Bryant et al. (USP 5,652,615)*. The Examiner rejected under 35 USC 103(a) claims 2, 3, 5-9, 11, 13 and 16 as being unpatentable over *Bryant et al.* in view of *Eldering (WO 00/33163)*. Claims 11 and 12 have been amended to more clearly define the invention and it is respectfully submitted that claims 1-17 are clearly patentable over the cited references for reasons that will be defined below.

Independent claim 1 is directed to a method of managing advertisement opportunities in a television network environment. The method includes recognizing one or more advertisement opportunities (avails) and creating a plurality of subavails based on the avails. Each of the subavails is directed at a particular target audience group and the subavails are aggregated to generate a group of subavails.

It is submitted that none of the cited references, either alone or in combination, disclose or suggest the embodiment of claim 1. For example, none of the cited references, whether taken alone or in combination with one another, disclose or suggest creating a plurality of subavails, wherein each of the subavails is directed to a particular target audience group, and aggregating the subavails to generate a group of subavails. This embodiment supports grouping the subavails by combining a plurality of subavails across different channels (claim 9) or grouping the subavails by combining a plurality of time-sequenced subavails (claim 10). This method enables an advertiser to reach the same number of viewers by purchasing a single avail but provides targeted advertising (see p. 15 of the specification).

Rather, *Bryant et al.* disclose a system and method for broadcasting programs to customers over a network including providing targeted advertisements with the programs. Broadcast programs have segments that are separately identified enabling a broadcaster to insert

content into a segment and to select content based on identification of the segment. A broadcaster can select a target audience that is determined by identifying a specific broadcast program. For example, a program may be targeted for retirees or for young families (see col. 6, lines 57-64). In other words, a program (such as *60 Minutes*) is generally watched by a target audience (retired people) and advertisements are inserted into the broadcast program based upon the target audience for that program. Thus, *Bryant et al.* fail to disclose or suggest creating a plurality of subavails, wherein each subavails is directed to a particular target audience group, and aggregating the subavails to generate one or more groups of subavails.

Eldering discloses a system and method for auctioning advertisement opportunities and fails to disclose or suggest creating a plurality of subavails or aggregating the subavails to generate one or more groups of subavails. Thus, *Eldering* fails to alleviate the deficiencies of *Bryant et al.*

Moreover, even assuming arguendo that the Examiner could somehow construe *Eldering* to disclose creating and grouping a plurality of subavails (without acknowledging or conceding such), *Eldering* does not qualify as prior art under 35 USC 103(c) and the Examiner's use of the references is erroneous. *Eldering* published less than one year prior to the filing of the current application and qualifies as prior art under 35 USC 102(e) (see MPEP 706.02(a)). According to the M.P.E.P (sec. 706.02 (l)(1)) references that qualify as prior art under 35 USC 102(e) that "were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person" do not qualify as 35 USC 103 references. The present invention and the *Eldering* published application were both subject to assignment to Expanse Networks, Inc., at the time of filing. Therefore, Applicants respectfully request the withdrawal of *Eldering* as prior art under 35 USC 103.

For at least the reasons addressed above, it is submitted that independent claim 1 is clearly patentable over the cited references. Claims 2-11 depend from independent claim 1. It is submitted that claims 2-11 are clearly patentable over the cited references for the reasons addressed above with respect to claim 1 and for the further features recited therein. Furthermore, with regards to claim 11, on page 10 of the Office Action the Examiner took OFFICIAL NOTICE that "it is notoriously well known to have advertisements that are gathered from the

same channel". Applicants respectfully submit that no evidence is provided to support this allegation and also submits that no motivation is provided to perform grouping of subavails from the same channel. Applicants respectfully request that the Examiner provide an appropriate reference or affidavit, or withdraw the rejection.

Independent claim 12 is directed to an advertisement management system for managing advertisement opportunities in a television network environment. The system includes an avail recognition module that recognizes one or more advertisement opportunities (avails). A subavail generation module creates a plurality of targeted subavails based on the recognized avails and a subavail aggregation module aggregates the subavails to generate a group of subavails.

As discussed above with respect to claim 1, it is submitted that none of the cited references, either alone or in combination, disclose or suggest the embodiment of claim 12. For example, none of the cited references, whether taken alone or in combination with one another, disclose or suggest a subavail generation module for creating a plurality of targeted subavails and a subavail aggregation module for aggregating the subavails to generate a group of subavails. This method enables an advertiser to reach the same number of viewers by purchasing a single avail but provides targeted advertising (see p. 15 of the specification).

For at least the reasons addressed above, it is submitted that independent claim 12 is clearly patentable over the cited references. Claims 13-17 depend from independent claim 12. It is submitted that claims 13-17 are clearly patentable over the cited references for the reasons addressed above with respect to claim 12 and for the further features recited therein. Furthermore, with regards to claim 16, on page 11 of the Office Action the Examiner took OFFICIAL NOTICE that "it is notoriously well known to have advertisements that are gathered from the same channel". Applicants respectfully submit that no evidence is provided to support this allegation and also submits that no motivation is provided to perform grouping of subavails from the same channel. Applicants respectfully request that the Examiner provide an appropriate reference or affidavit, or withdraw the rejection.

Conclusion

For the foregoing reasons, Applicant respectfully submits that claims 1-17 are in condition for allowance. Accordingly, early allowance of claims 1-17 is earnestly solicited.

Should the Examiner believe that an Interview would help expedite prosecution of the application, the Examiner is requested to contact the undersigned attorney to schedule such an Interview.

Respectfully submitted,

Date: 11-3-04

Craig Hallacher
Reg. No. 54,896

Technology, Patents & Licensing, Inc.
6206 Kellers Church Road
Pipersville, Pa 18947
phone: (215)766-2100 (x127)
fax: (215)766-2920